

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2840

**Introduced by Assembly Member Benoit Members Benoit,
Canciamilla, La Malfa, Parra, and Wolk**

February 24, 2006

An act to amend Section ~~1763~~ 1861.02 of the Insurance Code, relating to ~~insurance brokers~~ *automobile insurance*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2840, as amended, Benoit. ~~Surplus line brokers. Automobile insurance.~~

Existing law added by initiative statute specifies factors to determine rates and premiums of automobile insurance policies. These factors include the driver's driving safety record, the number of miles the driver drives annually, the number of years of driving experience the insured has had, and other factors the Insurance Commissioner may adopt by regulation and that have a substantial relationship to the risk of loss. Existing law authorizes the Legislature to amend these provisions if the amendments further the purposes of the initiative and are approved by a 2/3 vote of each house of the Legislature.

This bill would provide that the commissioner adopt no regulation that would change the weight given to any factor in determining automobile rates and premiums unless the department finds, based upon a study conducted by the California State Library, California Research Bureau, that the proposed change would result in rates and premiums that are substantially related to the risk of loss, and would

not result in rates and premiums that are arbitrary or unfairly discriminatory.

By amending the initiative statute, this bill would require a 2/3 vote of each house of the Legislature.

~~Existing law prohibits a person within this state from transacting insurance with a nonadmitted insurer, except through a surplus line broker, as specified. Existing law provides that it shall be conclusively presumed that insurance is placed in violation of these provisions if the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or lowest premium that could be obtained from an admitted insurer, except as otherwise provided.~~

~~This bill would instead require the insurance to be knowingly placed with a nonadmitted insurer for this presumption to operate.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~
yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1861.02 of the Insurance Code is
2 amended to read:
3 1861.02. (a) Rates and premiums for an automobile
4 insurance policy, as described in subdivision (a) of Section 660,
5 shall be determined by application of the following factors in
6 decreasing order of importance:
7 (1) The insured's driving safety record.
8 (2) The number of miles he or she drives annually.
9 (3) The number of years of driving experience the insured has
10 had.
11 (4) Those other factors that the commissioner may adopt by
12 regulation and that have a substantial relationship to the risk of
13 loss. The regulations shall set forth the respective weight to be
14 given each factor in determining automobile rates and premiums.
15 Notwithstanding any other provision of law, the use of any
16 criterion without approval shall constitute unfair discrimination.
17 *However, the commissioner shall adopt no regulation that would*
18 *change the weight given to any factor in determining automobile*
19 *rates and premiums unless the department finds, based upon a*
20 *study conducted by the California State Library, California*
21 *Research Bureau, that the proposed change will result in rates*

1 *and premiums that are substantially related to the risk of loss,*
2 *and will not result in rates and premiums that are arbitrary or*
3 *unfairly discriminatory.*

4 (b) (1) Every person who meets the criteria of Section
5 1861.025 shall be qualified to purchase a Good Driver Discount
6 policy from the insurer of his or her choice. An insurer shall not
7 refuse to offer and sell a Good Driver Discount policy to any
8 person who meets the standards of this subdivision.

9 (2) The rate charged for a Good Driver Discount policy shall
10 comply with subdivision (a) and shall be at least 20% below the
11 rate the insured would otherwise have been charged for the same
12 coverage. Rates for Good Driver Discount policies shall be
13 approved pursuant to this article.

14 (3) (A) This subdivision shall not prevent a reciprocal insurer,
15 organized prior to November 8, 1988, by a motor club holding a
16 certificate of authority under Chapter 2 (commencing with
17 Section 12160) of Part 5 of Division 2, and which requires
18 membership in the motor club as a condition precedent to
19 applying for insurance from requiring membership in the motor
20 club as a condition precedent to obtaining insurance described in
21 this subdivision.

22 (B) This subdivision shall not prevent an insurer which
23 requires membership in a specified voluntary, nonprofit
24 organization, which was in existence prior to November 8, 1988,
25 as a condition precedent to applying for insurance issued to or
26 through those membership groups, including franchise groups,
27 from requiring such membership as a condition to applying for
28 the coverage offered to members of the group, provided that it or
29 an affiliate also offers and sells coverage to those who are not
30 members of those membership groups.

31 (C) However, all of the following conditions shall be
32 applicable to the insurance authorized by subparagraphs (A) and
33 (B):

34 (i) Membership, if conditioned, is conditioned only on timely
35 payment of membership dues and other bona fide criteria not
36 based upon driving record or insurance, provided that
37 membership in a motor club may not be based on residence in
38 any area within the state.

39 (ii) Membership dues are paid solely for and in consideration
40 of the membership and membership benefits and bear a

1 reasonable relationship to the benefits provided. The amount of
2 the dues shall not depend on whether the member purchases
3 insurance offered by the membership organization. None of those
4 membership dues or any portion thereof shall be transferred by
5 the membership organization to the insurer, or any affiliate of the
6 insurer, attorney-in-fact, subsidiary, or holding company thereof,
7 provided that this provision shall not prevent any bona fide
8 transaction between the membership organization and those
9 entities.

10 (iii) Membership provides bona fide services or benefits in
11 addition to the right to apply for insurance. Those services shall
12 be reasonably available to all members within each class of
13 membership.

14 Any insurer that violates clause (i), (ii), or (iii) shall be subject
15 to the penalties set forth in Section 1861.14.

16 (c) The absence of prior automobile insurance coverage, in
17 and of itself, shall not be a criterion for determining eligibility for
18 a Good Driver Discount policy, or generally for automobile rates,
19 premiums, or insurability. However, notwithstanding subdivision
20 (a), an insurer may use persistency of automobile insurance
21 coverage with the insurer, an affiliate, or another insurer as an
22 optional rating factor. The Legislature hereby finds and declares
23 that it furthers the purpose of Proposition 103 to encourage
24 competition among carriers so that coverage overall will be
25 priced competitively. The Legislature further finds and declares
26 that competition is furthered when insureds are able to claim a
27 discount for regular purchases of insurance from any carrier
28 offering this discount irrespective of whether or not the insured
29 has previously purchased from a given carrier offering the
30 discount. Persistency of coverage may be demonstrated by
31 coverage under the low-cost automobile insurance program
32 pursuant to Article 5.5 (commencing with Section 11629.7) and
33 Article 5.6 (commencing with Section 11629.9) of Chapter 1 of
34 Part 3 of Division 2, or by coverage under the assigned risk plans
35 pursuant to Article 4 (commencing with Section 11620) of
36 Chapter 1 of Part 3 of Division 2. Persistency shall be deemed to
37 exist even if there is a lapse of coverage of up to two years due to
38 an insured's absence from the state while in military service, and
39 up to 90 days in the last five years for any other reason.

1 (d) An insurer may refuse to sell a Good Driver Discount
2 policy insuring a motorcycle unless all named insureds have been
3 licensed to drive a motorcycle for the previous three years.

4 (e) This section shall become operative on November 8, 1989.
5 The commissioner shall adopt regulations implementing this
6 section and insurers may submit applications pursuant to this
7 article which comply with those regulations prior to that date,
8 provided that no such application shall be approved prior to that
9 date.

10 SECTION 1. Section 1763 of the Insurance Code is amended
11 to read:

12 ~~1763. (a) A surplus line broker may solicit and place~~
13 ~~insurance, other than as excepted in Section 1761, with~~
14 ~~nonadmitted insurers only if that insurance can not be procured~~
15 ~~from insurers admitted for the particular class or classes of~~
16 ~~insurance and that actually write the particular type of insurance~~
17 ~~in this state. Each surplus line broker shall be responsible to~~
18 ~~ensure that a diligent search is made among insurers that are~~
19 ~~admitted to transact and are actually writing the particular type of~~
20 ~~insurance in this state before procuring the insurance from a~~
21 ~~nonadmitted insurer. Each surplus line broker shall file with the~~
22 ~~commissioner or his or her designee, within 60 days of placing~~
23 ~~any insurance with a nonadmitted insurer, a written report, that~~
24 ~~shall be kept confidential, regarding the insurance. This report~~
25 ~~shall include the name and address of the insured, the identity of~~
26 ~~the insurer or insurers, a description of the subject and location of~~
27 ~~the risk, the amount of premium charged for the insurance, a~~
28 ~~copy of the declarations page of the policy or a copy of the~~
29 ~~surplus line broker's certificate or binder evidencing the~~
30 ~~placement of insurance, and other pertinent information that the~~
31 ~~commissioner may reasonably require. In addition, each surplus~~
32 ~~line broker shall file a standardized form to be prescribed by the~~
33 ~~commissioner setting forth the diligent efforts to place the~~
34 ~~coverage with admitted insurers and the results of these efforts.~~
35 ~~The form shall be signed by a person licensed under this code~~
36 ~~who has made the diligent search required by this section or who~~
37 ~~supervised an unlicensed person or persons who actually~~
38 ~~conducted the search. The insurance shall not be placed with a~~
39 ~~nonadmitted insurer for the purpose of procuring a rate lower~~
40 ~~than the lowest rate that will be accepted by any admitted insurer~~

1 except as provided by subdivision (c). The commissioner may
2 make and publish reasonable rules and regulations, consistent
3 with this chapter, in respect to transactions governed thereby and
4 the basis or bases for his or her determinations hereunder.

5 (b) It shall be prima facie evidence that a diligent search
6 among admitted insurers has been made if the standardized form,
7 filed as required by subdivision (a), establishes that three
8 admitted insurers that actually write the particular type of
9 insurance in this state have declined the risk or that fewer than
10 three admitted insurers actually write the particular type of
11 insurance. The commissioner, or his or her designee, may review
12 the form for the accuracy of the information provided on it,
13 including, but not limited to, whether the listed insurers actually
14 write that type of insurance and whether the three insurers
15 declined the risk. The commissioner may take disciplinary action
16 against the person signing the form for any misrepresentation
17 made in the form due to the negligence of or the result of an
18 intentional act by that person or the person or persons who
19 actually conducted the search. Those actions may include any
20 action authorized to be taken against a licensed person by this
21 code. Nothing in this subdivision shall preclude the
22 commissioner or his or her designee from directing the surplus
23 line broker to conduct a further or additional search among
24 admitted insurers for similar placements in the future.

25 (c) It shall be conclusively presumed that insurance is placed
26 in violation of this section if the insurance is knowingly placed
27 with a nonadmitted insurer at a lower rate of premium or lower
28 premium than the lowest rate of premium or the lowest premium
29 that could be obtained from an admitted insurer unless, at the
30 time the insurance attaches, there is filed with the commissioner
31 a statement describing the insurance, specifying the rate and the
32 nearest procurable rates from admitted insurers. The statement
33 shall include an explanation of the reasons that the insurance
34 must be placed with a nonadmitted insurer even though it is
35 available from an admitted insurer. Unless the commissioner, or
36 his or her designee, within five days after that filing notifies the
37 filing broker that in his or her opinion the placing of the
38 insurance constitutes a violation of this section, the broker may
39 thereafter maintain in effect that insurance. If within that five-day
40 period the commissioner notifies the surplus line broker that the

1 insurance is in violation of this section and orders the broker to
2 effect termination of that insurance within 10 days from the
3 notice, and the broker fails or refuses to effect that termination;
4 that failure or refusal is a violation of this section.

5 (d) Statements filed under this section are not subject to public
6 inspection unless the commissioner determines that the public
7 interest or the welfare of the filing broker requires that any
8 statement be made public.

9 (e) For purposes of this section, “type of insurance” means the
10 hazard or combination of hazards covered by a contract of
11 insurance.

12 (f) Notwithstanding subdivision (a), this section shall not
13 apply to insurance issued or delivered in this state by a
14 nonadmitted Mexican insurer by and through a surplus line
15 broker affording coverage exclusively in the Republic of Mexico
16 on property located temporarily or permanently in, or operations
17 conducted temporarily or permanently within, the Republic of
18 Mexico.